Calendar No. 186

99TH CONGRESS
1st Session

SENATE

REPORT
99-84

OCS PAPERWORK AND REPORTING ACT

JUNE 14, 1985.—Ordered to be printed Filed under authority of the order of the Senate of June 13, (legislative day, June 3), 1985

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1068]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1068) to eliminate unnecessary paperwork and reporting requirements contained in section 15(1) of the Outer Continental Shelf Lands Act, and sections 601 and 606 of the Outer Continental Shelf Lands Act Amendments of 1978, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be referred to as the "OCS Paperwork and Reporting Act".

SEC. 2. (a) Section 15(1) of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1343(1)), is amended by—

(1) adding the word "and" after "activities;" in paragraph (C);

(2) deleting paragraph (D); and

(3) redesignating paragraph (E) as paragraph (D).

(b) Title VI of the Outer Continental Shelf Lands Act Amendments of 1978 is amended by deleting section 601 (43 U.S.C. 1861).

(c) Title VI of the Outer Continental Shelf Lands Act Amendments of 1978 is amended by deleting section 606 (43 U.S.C. 1865) and inserting in lieu thereof the following:

"INVESTIGATION OF RESERVES OF OIL AND GAS IN OUTER CONTINENTAL SHELF

"SEC. 606. The Secretary of the Interior shall conduct a continuing investigation to determine an estimate of the total discovered crude oil and natural gas reserves by fields (including proved and indicated reserves) and undiscovered crude oil and natural gas resources (including hypothetical and speculative resources) of the Outer Continental Shelf.

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"The Secretary of the Interior shall provide a biennial report to Congress on June 30 of every odd numbered year on the results of such investigation.".

PURPOSE

As ordered reported, S. 1068 would repeal several reporting requirements contained in the Outer Continental Shelf Lands Act, Public Law 83-21 (67 Stat 462), as amended by Public Law 95-372 (92 Stat 632).

BACKGROUND AND NEED

Section 15(1)(D) of the OCS Lands Act requires the Department of the Interior to include in its annual report on leasing and production on the OCS "a list of all shut-in and flaring wells". Section 601 of the OCS Lands Act Amendments of 1978 requires the Secretary of the Interior to provide an annual report to the Comptroller General on OCS oil and gas wells that are shut-in; that is, not being produced, and natural gas wells that are being flared; that is, the gas being vented to the atmosphere instead of being collected for pipelines. It also requires the Secretary to indicate in his report why each such well is shut-in or flared and whether, with respect to each such well, the Secretary will order its production or cessation of flaring, as the case may be. Finally section 601 requires the Comptroller General to review and evaluate the methodology which the Secretary used in deciding whether or not to require production of the well or the cessation of flaring.

Section 606 requires the Department of the Interior to conduct a continuing investigation of the availability of oil and gas on the OCS, including a determination of the maximum rate of production (MAR) of significant oil and gas fields of the OCS and whether actual production has been less than MAR and why. Section 606 also requires that this continuing investigation include an estimate of discovered and undiscovered crude oil and gas reserves on the OCS, the relationship of all this information collected under section 606 to requirements of conservation, industry, commerce, and the national defense and independent evaluation of trade association procedures for estimating OCS reserves.

Several concerns have been expressed about the need for these reporting requirements. For example, the Comptroller General has recommended that the Congress repeal the legislation requiring Interior's annual report on shut-in and flaring wells. Their recommendation was based on their review of the reports and conclusions that Interior's reports serves no useful purpose, considering recent decontrol of domestic energy prices, and are expensive to prepare at a time when such resources could be better utilized. Additional concerns have been expressed about the usefulness of maximum attainable rate (MAR) of production estimates as required under section 606.

The General Accounting Office has suggested that MAR's are not a valid basis for the Congress to use in estimating OCS production capability in an emergency. The Department of the Interior has taken the position that the information required by the provision of section 606 which requires an analysis of the relationship of MAR's to conservation, industry, commerce and national defense is

unnecessary. The provision in section 606 which requires an independent evaluation of trade procedures for estimating OCS reserves and production capacity has already been fulfilled by the submission of the three required reports to Congress.

Legislative History

S. 1068 was introduced on May 3, 1985 by Senator Johnston and McClure and referred to the Committee. A companion measure, H.R. 1983 was introduced by Mr. Jones and others on April 4, 1985.

Committee Recommendation and Tabulation of Votes

The committee, in an open business session on June 12, 1985, by unanimous vote of a quorum present, recommended that the Senate pass S. 1068 if amended as described herein.

The rollcall vote on reporting the measure was 17 yeas and 0 nays, as follows:

YEAS	NAYS
Mr. McClure	
Mr. Hatfield	
Mr. Weicker	
Mr. Domenici*	
Mr. Wallop*	
Mr. Warner*	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Evans	
Mr. Johnston	
Mr. Bumpers*	
Mr. Ford	
Mr. Melcher	
Mr. Bradley	
Mr. Bingaman	
Mr. Rockefeller	

*Indicates voted by proxy.

Committee Amendment

The committee adopted an amendment in the nature of a substitute which retained the repeal of section 15(1)(D) of the OCS Lands Act and section 601 of the OCS Lands Act Amendments of 1978, but only removed portions of section 606 of the OCS Lands Act Amendments of 1978. The committee amendment retains with some revision the provision of section 606 which requires the Secretary of the Interior to conduct a continuing investigation to determine an estimate of the total discovered crude oil and natural gas resources of the Outer Continental Shelf. The committee amendment further requires that the Secretary of the Interior report bienially to Congress on June 30 of every odd numbered year on the results of this investigation.

The committee intends that the estimates of the total discovered crude oil and natural gas reserves include both proved and indicated reserves, and that these proved and indicated reserves be report-

ed separately. The committee further intends that the estimates of undiscovered crude oil and natural gas resources include hypothetical and speculative resources and that these hypothetical and speculative resources be reported separately.

Cost and Budgetary Considerations

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 13, 1985.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1068, the OCS Paperwork and Reporting Act, as ordered reported by the Senate Committee on Energy and Natural Resources, June 12, 1985.

The bill would repeal the requirement that the Secretary of the Interior provide an annual report to Congress on shut-in and flaring wells. The bill would also narrow the scope of a biennial report on the availability of oil and gas on the Outer Continental Shelf. Based on information from the Minerals Management Service in the Department of the Interior, we estimate that these changes in reporting requirements would save about $250,000 annually.

Enactment of this legislation would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

Rudolph G. Penner.

Regulatory Impact Evaluation

The bill would not impose additional government-established standards or significant economic responsibilities on private individuals or businesses. In fact, the bill would reduce the reporting requirements of many businesses involved in Outer Continental Shelf oil and gas production activities.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Enactment of S. 1068 would result in a reduction in paperwork.

Executive Communications

The pertinent legislative reports and communications received by the committee from the Office of Management and Budget and from the Department of the Interior setting forth Executive agency recommendations relating to S. 1068 are set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
Washington, DC, June 11, 1985.

Hon. JAMES MCCLURE,
Chairman, Senate Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 1068, a bill "To eliminate unnecessary paperwork and reporting requirements contained in section 15(1) of the Outer Continental Shelf Lands Act (OCSLA) and sections 601 and 606 of the OCSLA Amendments of 1978."

We support the enactment of S. 1068 as it would be amended by the attached proposed Committee amendment.

S. 1068 would eliminate two statutorily required reports from the Department of the Interior to the Congress. These reports include: a list of shut-in and flaring wells reports to the Congress and Comptroller General, and a report on the investigations of the availability of oil and natural gas from the OCS.

The Department wholeheartedly supports deletion of the report which requires that a list of shut-in and flaring wells be contained in the Annual Report of the Outer Continental Shelf Oil and Gas Leasing and Production Program as well as the requirement that a similar report be sent to the Comptroller General. The General Accounting Office has recommended in several past reports that the shut-in and flaring wells reporting requirements be discontinued. The data is expensive to gather, and is better used to analyze shut-in well flaring trends and anomalies rather than as a tool to judge whether or not production is being withheld or gas is being flared unnecessarily, which was the original intent of Congress in requiring the report.

Regarding section 606, we support the proposed Committee amendment. This amendment would remove only portions of the section, rather than the entire section as envisioned in the original S. 1068. Our specific concerns are with subsection (d) which itemizes specific information to be included in the continuing investigation conducted by the Secretary of the Interior on the availability of oil and natural gas on the Outer Continental Shelf as called for in 606(c), and the report to Congress required in 606(e). The Department agrees that (d)(1), which requires an investigation of the Maximum Attainable Rate (MAR) of production from significant fields; (d)(3), which requires an analysis of the relationship of such information to conservation, industry, commerce and national defense; and (d)(4), which requires an independent evaluation of trade procedures for estimating OCS reserves and production capacity, should be eliminated. The information required by these portions of the law are not the best available in determining maximum production rates. In addition, the General Accounting Office has suggested that MAR's are not a valid basis for the Congress to use in their determination of OCS production to meet supply emergencies.

However, section 606(d)(2), which requires an estimate of discovered oil and natural gas reserves and undiscovered crude oil and natural gas resources, should remain. Reserve and resource estimates are an integral part of the preparation of the 5-Year Leasing Schedule as well as part of the preparation for individual OCS

sales. Although the authority to carry out this activity will not be lost if section 606 is abolished, we believe it is very important that the offshore leasing program continue to have the legislative mandate to carry out these activities. We agree with the proposed Committee amendment which would combine sections 606(c) and (d)(2). This amendment would continue to require the Secretary of the Interior to conduct an investigation which now would include only reserve and resource estimates. The language in 606(c), which provides that the data gathered and used in the investigation be "independently audited and verified," should be eliminated because the data in question is often proprietary.

We have no objection to the continuance of a biennial report to Congress solely on the results of the resource and reserve estimates. It will impose no additional workload or cost to the Department because the data to be used in the report is gathered for other purposes.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. STEVEN GRILES,
Deputy Assistant Secretary.

[Enclosure.]

DRAFT COMMITTEE AMENDMENT TO S. 1068

Instead of deleting Section 606 (43 U.S.C. 1865), substitute in lieu thereof the following:

§ 605. Investigation of reserves of oil and gas in the Outer Continental Shelf.

The Secretary of the Interior shall conduct a continuing investigation to determine:

an estimate of the total discovered crude oil and natural gas reserves by fields (including proved and indicated reserves);

and undiscovered crude oil and natural gas resources (including hypothermal and speculative resources) of the Outer Continental Shelf.

The Secretary of the Interior shall provide a biennial report to Congress on the results of such investigation.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 1068, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

OUTER CONTINENTAL SHELF LANDS ACT

Public Law 83-212 (67 Stat 462), as amended by Public Law 95-372 (92 Stat 648)

* * * * * * *

SEC. 15. ANNUAL REPORT BY SECRETARY TO CONGRESS.—Within six months after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives the following reports:

(1) A report on the leasing and production program in the Outer Continental Shelf during such fiscal year, which shall include—

(A) a detailed accounting of all moneys received and expended;

(B) a detailed accounting of all exploration, exploratory drilling, leasing, development, and production activities;

(C) a summary of management, supervision, and enforcement activities; *and*

[(D) a list of all shut-in and flaring wells; and]

[(E)] (*D*) recommendations to the Congress (i) for improvements in management, safety, and amount of production from leasing and operations in the Outer Continental Shelf, and (ii) for resolution of jurisdictional conflicts or ambiguities.

(2) A report prepared after consultation with the Attorney General, with recommendations for promoting competition in the leasing of Outer Continental Shelf lands, which shall include any recommendations or findings by the Attorney General and any plans for implementing recommended administrative changes and drafts of any proposed legislation, and which shall contain—

(A) an evaluation of the competitive bidding systems permitted under the provisions of section 8 of this Act, and, if applicable, the reasons why a particular bidding system has not been utilized;

(B) an evaluation of alternative bidding systems not permitted under section 8 of this Act, and why such system or systems should or should not be utilized;

(C) an evaluation of the effectiveness of restrictions on joint bidding in promoting competition and, if applicable, any suggested administrative or legislative action on joint bidding;

(D) an evaluation of present measures and a description of any additional measures to encourage entry of new competitors; and

(E) an evaluation of present measures and a description of additional measures dealing with supplies of oil and gas to independent refiners and distributors.

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OUTER CONTINENTAL SHELF LANDS ACT AMENDMENT OF 1978

Public Law 95-372 (92 Stat. 632)

* * * * * * *

TITLE VI—MISCELLANEOUS PROVISIONS

[REVIEW OF SHUT-IN OR FLARING WELLS

[SEC. 601. (a) In a report submitted within six months after the date of enactment of this Act, and his annual report thereafter, the Secretary of the Interior shall list all shut-in oil and gas wells and wells flaring natural gas on leases issued under the Outer Continental Shelf Lands Act. Each such report shall be submitted to the Comptroller General and shall indicate why each well is shut-in or flaring natural gas, and whether the Secretary intends to require production on such a shut-in well or order cessation flaring.

[(b) Within six months after receipt of the Secretary's report, the Comptroller General shall review and evaluate the methodology used by the Secretary in allowing the wells to be shut-in or to flare natural gas and submit his findings and recommendations to the Congress.]

REVIEW AND REVISION OF ROYALTY PAYMENTS

SEC. 602. As soon as feasible and no later than ninety days after the date of enactment of this Act, and annually thereafter, the Secretary of the Interior shall submit a report or reports to the Congress describing the extent, during the two-year period preceding such report, of delinquent royalty accounts under leases issued under any Act which regulates the development of oil and gas on Federal lands, and what new auditing, post-auditing, and accounting procedures have been adopted to assure accurate and timely payment of royalties and net profit shares. Such report or reports shall include any recommendations for corrective action which the Secretary of the Interior determines to be appropriate.

NATURAL GAS DISTRIBUTION

SEC. 603. (a) The purpose of this section is to encourage expanded participation by local distribution companies in acquisition of leases and development of natural gas resources on the Outer Continental Shelf by facilitating the transportation in interstate commerce of natural gas, which is produced from a least located on the Outer Continental Shelf and owned, in whole or in part, by a local distribution company, from such lease to the service area of such local distribution company.

(b) The Federal Energy Regulatory Commission shall, after opportunity for presentation of written and oral views, promulgate and publish in the Federal Register a statement of Commission policy which carries out the purpose of this section and sets forth the standards under which the Commission will consider applications for, and, as appropriate, issue certificates of public convenience and necessity pursuant to section 7 of the Natural Gas Act, for the transportation in interstate commerce of natural gas, which

is produced from a lease located on the Outer Continental Shelf and owned, in whole or in part, by a local distribution company, from such lease to the service area of such local distribution company. Such statement of policy shall specify the criteria, limitations, or requirements the Commission will apply in determining—

(1) whether the application of any local distribution company qualifies for consideration under the statement of policy; and

(2) whether the public convenience and necessity will be served by the issuance of the requested certificate of transportation.

Such statement of policy shall also set forth the terms or limitations on which the Commission may condition, pursuant to section 7 of the Natural Gas Act, the issuance of a certificate of transportation under such statement of policy. To the maximum extent practicable, such statement shall be promulgated and published within one year after the date of enactment of this section.

(c) For purposes of this section, the term—

(1) "local distribution company" means any person—

(A) engaged in the distribution of natural gas at retail, including any subsidiary or affiliate thereof engaged in the exploration and production of natural gas; and

(B) regulated, or operated as a public utility, by a State or local government or agency thereof;

(2) "interstate commerce" shall have the same meaning as such term has under section 2(7) of the Natural Gas Act; and

(3) "Commission" means the Federal Energy Regulatory Commission.

ANTIDISCRIMINATION PROVISIONS

SEC. 604. Each agency or department given responsibility for the promulgation or enforcement of regulations under this Act or the Outer Continental Shelf Lands Act shall take such affirmative action as deemed necessary to prohibit all unlawful employment practices and to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving or participating in any activity, sale, or employment, conducted pursuant to the provisions of this Act or the Outer Continental Shelf Lands Act. The agency or department shall promulgate such rules as it deems necessary to carry out the purposes of this section, and any rules promulgated under this section, whether through agency and department provisions or rules, shall be similar to those established and in effect under title VI and title VII of the Civil Rights Act of 1964.

SUNSHINE IN GOVERNMENT

SEC. 605. (a) Each officer or employee of the Department of the Interior who—

(1) performs any function or duty under this Act or the Outer Continental Shelf Lands Act, as amended by this Act; and

(2) has any known financial interest in any person who (A) applies for or receives any permit or lease under, or (B) is

other-wise subject to the provisions of this Act or the Outer Continental Shelf Lands Act,

shall, beginning on February 1, 1979, annually file with the Secretary of the Interior a written statement concerning all such interests held by such officer or employee during the preceeding calendar year. Such statement shall be available to the public.

(b) The Secretary of the Interior shall—

(1) within ninety days after the date of enactment of this Act—

(A) define the term "known financial interest" for purposes of subsection (a) of this section; and

(B) establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) In the rules prescribed in subsection (b) of this section, the Secretary may identify specific positions within the Department of the Interior which are of a nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the reqeuirements of this section.

(d) Any officer or employee who is subject to, and knowingly violates, this section shall be fined not more than $2,500 or imprisoned not more than one year, or both.

[INVESTIGATION OF AVAILABILITY OF OIL AND NATURAL GAS FROM THE OUTER CONTINENTAL SHELF

[SEC. 606. (a) The Congress hereby finds that—

[(1) there is a serious lack of adequate basic energy information available to the Congress and the Secretary of the Interior with respect to the availability of oil and natural gas from the Outer Continental Shelf;

[(2) there is currently an urgent need for such information;

[(3) the existing collection of information by Federal departments and agencies relevant to the determination of the availability of such oil and natural gas is uncoordinated, is jurisdictionally limited in scope, and relies too heavily on unverified information from industry sources;

[(4) adequate, reliable, and comprehensive information with respect to the availability of such oil and natural gas is essential to the national security of the United States; and

[(5) this lack of adequate reserve data requires a reexamination of past data as well as the acquisition of adequate current data.

[(b) The purpose of this section is to enable the Secretary of the Interior and the Congress to gain the best possible knowledge of the status of Outer Continental Shelf oil and natural gas reserves, resources, productive capacity, and production availabvle to meet current and future energy supply emergencies, to gain accurate

knowledge of the potential quantity of oil and natural gas resources which could be made available to meet such emergencies, and to aid in establishing energy pricing and conservation policies.

[(c) The Secretary of the Interior shall conduct a continuing investigation, based on data and information which he determines has been adequately and independently audited and verified, for the purpose of determining the availability of all oil and natural gas produced or located on the Outer Continental Shelf.

[(d) The investigation conducted pursuant to this section shall include, among other items—

[(1)(A) a determination of the maximum attainable rate of production (MAR) of crude oil and natural gas from significant fields on the Outer Continental Shelf; and

[(B) an analysis of whether the actual production has been less than the MAR and, if so, the reasons for the differences;

[(2) an estimate of the total discovered crude oil and natural gas reserves by fields (including proved and indicated reserves) and undiscovered crude oil and natural gas resources (including hypothetical and speculative resources) of the Outer Continental Shelf;

[(3) the relationship of any and all such information to the requirements of conservation, industry, commerce, and the national defense; and

[(4) an independent evaluation of trade association procedures for estimating Outer Continental Shelf reserves, ultimate recovery, and productive capacity for years in which trade associations made such estimates. In order to provide maximum opportunity for evaluation and continuity, the Secretary shall obtain all the available data and other records, including a description of the methodology and estimating procedures, which the trade associations used in compiling their data with respect to the reserves.

[(e) The Secretary shall, not later than one year after the date of enactment of this section, submit an initial report to the Congress. The initial report shall include cost estimates for the separate components of the continuing investigation and a time schedule for meeting all of its specifications. The schedule shall provide for producing all the information required in subsections (d)(1)(A), (d)(2), and (d)(3) of this section on the day following the first complete calendar year after such date of enactment, and every two years thereafter. The Secretary shall make separate reports on the data acquired pursuant to subsection (d)(4) of this section as follows:

[(1) Within six months after the date of enactment of this section, a report on the acquisition and details of trade association data and information.

[(2) Within twelve months after submission of the report required by subsection (e)(1) of this section, and evaluation of the trade association materials.

[(3) Within twelve months after submission of the report required by paragraph (2) of this subsection, a report on the relationship between trade association data and the new data collected under this section.

[(f) The Secretary of the Interior shall consult with the Federal Trade Commission regarding categories of information acquired pursuant to this section. Notwithstanding any other provision of law, the Secretary of the Interior shall, upon request of the Federal Trade Commission, make available to such Commission any information acquired under this section.

[(g) For purposes of this section, the term—

[(1) "maximum attainable rate of production" or "MAR" means the maximum rate of production of crude oil and natural gas which may be produced under actual operating conditions without loss of ultimate recovery of crude oil and natural gas; and

[(2) "Outer Continental Shelf" has the meaning given such term in section 2(a) of the Outer Continental Shelf Lands Act.]

INVESTIGATION OF RESERVES OF OIL AND GAS IN OUTER CONTINENTAL SHELF

SEC. 606. The Secretary of the Interior shall conduct a continuing investigation to determine an estimate of the total discovered crude oil and natural gas reserves by fields (including proved and indicated reserves) and undiscovered crude oil and natural gas resources (including hypothetical and speculative resources) of the Outer Continental Shelf.

The Secretary of the Interior shall provide a biennial report to Congress on June 30 of every odd numbered year on the results of such investigation.

RECOMMENDATIONS FOR TRAINING PROGRAM

SEC. 607. Not later than ninety days after the date of enactment of this Act, the Secretary of the Interior, in consultation with the Secretary of the Department in which the Coast Guard is operating, shall prepare and submit to the Congress a report which sets forth the recommendations of the Secretary for a program to assure that any individual—

(1) who is employed on any artificial island, installation, or other device located on the Outer Continental Shelf; and

(2) who, as part of such employment, operates, or supervises the operation of pollution-prevention equipment.

is properly trained to operate, or supervise the operation of, such equipment, as the case may be.

RELATIONSHIP TO EXISTING LAW

SEC. 608. (a) Except as otherwise expressly provided in this Act, nothing in this Act shall be construed to amend, modify, or repeal any provision of the Coastal Zone Management Act of 1972, the National Environmental Policy Act of 1969, the Mining and Mineral Policy Act of 1970, or any other Act.

(b) Nothing in this Act or any amendment made by this Act to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) or any other Act shall be construed to affect or modify the provisions of the Department of Energy Organization Act (42 U.S.C. 7101 et

seq.) which provide for the transferring and vesting of functions to and in the Secretary of Energy or any component of the Department of Energy.

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Calendar No. 190

99TH CONGRESS
1st Session

SENATE

REPORT
99-87

FALLING WATER CHARGE, COLUMBIA BASIN PROJECT, WASHINGTON

JUNE 19, (legislative day, JUNE 3), 1985.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 953]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 953) to validate contractual relationships between the United States and various non-Federal entities, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

On page 1, delete lines 6 and 7 and insert "U.S.C. 803(e)) by deleting 'Commission.' and inserting in lieu thereof 'Commission: *Provided, however*, That no charge shall be assessed".

PURPOSE OF THE MEASURE

Enactment of S. 953 would amend section 10(e) of the Federal Power Act to provide that no "falling water charge" or other annual charge would be assessed by the Federal Energy Regulatory Commission against a licensee utilizing irrigation facilities constructed by the United States if a contract had been previously entered into which provided that the revenues from hydroelectric powerplants constructed and owned by the licensee utilizing the irrigation facilities would be the property of the licensee.

BACKGROUND

In 1968, the three irrigation districts of the Bureau of Reclamation's Columbia Basin project in Washington State entered into amended project repayment contracts with the Department of the Interior. The amended repayment contracts provide that the irriga-

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tion districts may construct hydroelectric facilities within the project area and retain all resulting revenues. The irrigation districts have argued before the Federal Energy Regulatory Commission (FERC) that these amended contracts preclude the FERC from imposing any charges pursuant to section 10(e) of the Federal Power Act (16 U.S.C. § 803(e)) on hydroelectric developments within the project. The FERC has rejected this argument, and the irrigation districts have appealed the FERC's ruling to the U.S. Court of Appeals for the D.C. Circuit.

The irrigation districts currently operate one hydroelectric project with an additional project under construction. Additional sites with hydroelectric potential have been identified in the project area.

Consideration of related legislation during the 98th Congress revealed that a similar contractual situation exists in connection with the Salt River project in Arizona. The contract between the United States and the Salt River project was entered into in 1917. The Columbia Basin project and the Salt River project are the only projects identified by the Administration where such contracts exist.

Legislative History

S. 953 was introduced on April 18, 1985 by Senators Evans and Gorton. A provision similar to S. 953 was included in S. 1132 in the 98th Congress (S. Rept. 98-363). S. 1132 was twice passed by unanimous consent in the Senate and passed once by the House (H. Rept. 98-1052). However, Congress adjourned before the final version of S. 1132 could be achieved.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on June 12, 1985, by unanimous vote of a quorum present, recommends that the Senate pass S. 953, if amended as described herein.

The rollcall vote on reporting the measure was 16 yeas, 0 nays, and one member responding "present" as follows:

YEAS	NAYS
Mr. McClure	
Mr. Hatfield	
Mr. Domenici[1]	
Mr. Wallop[1]	
Mr. Warner[1]	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Evans	
Mr. Johnston	
Mr. Bumpers[1]	
Mr. Ford	
Mr. Melcher	

[1] Indicates voted by proxy.

Mr. Bradley
Mr. Bingaman
Mr. Rockefeller

PRESENT

Mr. Weicker

COMMITTEE AMENDMENT

The amendment is technical.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 13, 1985.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 953, a bill to validate contractual relationships between the United States and various non-Federal entities, as ordered reported by the Senate Committee on Energy and Natural Resources, June 12, 1985. Depending on the results of court rulings in the absence of legislation, we estimate that this bill could cost the government a total of $1.6 million over the 1986–1990 period.

Under current law, the Federal Regulatory Commission (FERC) is required to levy annual charges on operators of hydroelectric facilities involving federal dams or other structures. Three licencees have appealed to FERC and the courts for an exemption from this fee, because their federal contracts provide that the revenues from the power facilities shall remain the property of the developers. FERC has not required these licencees to pay the fee while these administrative and judicial proceedings are underway.

S. 953 provides an exemption from the fee in cases where the licencee uses federal irrigation facilities and has an existing contractual right to the revenues from the power project. This exemption would apply to these three licencees, and to any future projects involving the Columbia River Basin project or the Salt River project. Therefore, if the courts were to uphold FERC's authority to charge the fee under current law, S. 953 would result in lost fee income of about $225,000 that would be due from 1985 assessments and of about $275,000 per year that would be due over the 1986–1990 period. If, on the other hand, the courts would deny FERC's authority to collect such fees, the bill would not affect the federal budget.

Enactment of S. 953 would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 953.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses. Enactment of S. 953 would impose no additional record keeping or reporting burden. No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Enactment of S. 953 would preclude the increase in paperwork which would otherwise result from the imposition of a fee.

EXECUTIVE COMMUNICATIONS

On June 3, 1985, the Committee requested legislative reports on S. 953 from the Department of the Interior, the Federal Energy Regulatory Commission, and the Office of Management and Budget. The legislative reports have not yet been received. The Committee will have these reports printed in the Congressional Record when they are received.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 953, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Federal Power Act

The Federal Water Power Act is the Act of June 10, 1920, ch. 285, 41 Stat. 1063, entitled "An Act to create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto, and to repeal section 18 of the Rivers and Harbor Appropriation Act, approved August 8, 1917, and for other purposes." Section 212 of the Act of August 26, 1935, 49 Stat. 847, provides that the Federal Water Power Act, as amended, shall constitute Part I of an expanded act; and section 213 of the 1935 Act, 49 Stat. 847–63, adds Part II, relating to the regulation of electrical utility companies engaged in interstate commerce, and Part III, dealing with licenses and administrative matters. This expanded act is given the short title of Federal Power Act, 49 Stat. 863.

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Sec. 10. All licenses issued under this Part shall be on the following conditions:

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(e) That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the

purpose of reimbursing the United States for the costs of the administration of this Part; for recompensing it for the use, occupancy, and enjoyment of its lands or other property; and for the expropriation to the Government of excessive profit until the respective States shall make provision for preventing excessive profit or for the expropriation thereof to themselves, or until the period of amortization as herein provided is reached, and in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges, and any such charges may be adjusted from time to time by the Commission as conditions may require: *Provided,* That when licenses are issued involving the use of Government dams or other structures owned by the United States or tribal lands embraced within Indian reservations the Commission shall, subject to the approval of the Secretary of the Interior in the case of such dams or structures in reclamation projects and, in the case of such tribal lands, subject to the approval of the Indian tribe having jurisdiction of such lands as provided in section 16 of the Act of June 18, 1934 (48 Stat. 984), fix a reasonable annual charge for the use thereof, and such charges may with like approval be readjusted by the Commission at the end of twenty years after the project is available for service and at periods of not less than ten years thereafter upon notice and opportunity for hearing: *Provided further,* That licenses for the development, transmission, or distribution of power by States or municipalities shall be issued and enjoyed without charge to the extent such power is sold to the public without profit or is used by such State or municipality for State or municipal purposes, except that as to projects constructed or to be constructed by States or municipalities primarily designed to provide or improve navigation, licenses therefor shall be issued without charge; and that licenses for the development, transmission, or distribution of power for domestic, mining, or other beneficial use in projects of not more than two thousand horsepower installed capacity may be issued without charge, except on tribal lands within Indian reservations; but in no case shall a license be issued free of charge for the development and utilization of power created by any Government dam and that the amount charged therefore in any license shall be such as determined by the [Commission.] *Commission: Provided, however, That no charge shall be assessed in those cases where the United States has heretofore entered into a contract with a licensee which provides that the licensee may build and own powerplants utilizing irrigation facilities constructed by the United States and which further provides that all revenues from such powerplants and from the use, sale, or the disposal of power therefrom shall be and remain the property of the licensee.* In the event an overpayment of any charge due under this section shall be made by a licensee, the Commission is authorized to allow a credit for such overpayment when charges are due for any subsequent period.

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